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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
Federal-State Joint Board on Universal Service )  
TRACFONE WIRELESS, INC. )  
Petition for Designation as an )  
Eligible Telecommunications Carrier )  
In the State of Florida )  
\_\_\_\_\_ )

CC Docket No. 96-45

**PETITION FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER  
IN THE STATE OF FLORIDA**

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July 21, 2004

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## **EXHIBITS**

1. Declaration of TracFone President
2. Declaration from the Florida Public Service Commission Declining Jurisdiction
3. High-Cost Interstate Access and Interstate Common Line Support Certification Letter

## SUMMARY

TracFone Wireless, Inc. (“TracFone”) is seeking designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the “Act”) throughout the entire State of Florida, including both non-rural telephone company service areas and rural telephone company service areas.

TracFone is a reseller of Commercial Mobile Radio Services (“CMRS”) throughout Florida. Through its resale agreements with five underlying carriers, TracFone has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the Commission’s Rules, including Lifeline Service to qualifying customers, to any customer requesting this service within the designated service area.

Under Section 214(e)(6) of the Act, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the carrier meets the requirements of Section 214(e)(6). *TracFone meets the requirements for ETC designation pursuant to Section 214(e)(6).* TracFone recognizes that Section 214(e)(1)(A) states that ETCs shall offer services, at least in part, over their own facilities. Due to the fact that TracFone provides service by reselling the services of its underlying vendors, it has requested that the Commission exercise its forbearance authority with respect to the facilities-based requirement. TracFone meets all the conditions to grant a petition for forbearance. Enforcement of the requirement that an ETC provide service using at least a portion of its own facilities is not necessary to ensure that TracFone’s charges and practices are just and reasonable and are not unjustly or unreasonably discriminatory; is not necessary to protect consumers; and is consistent with the public interest. Unlike the situation that may exist when a carrier offers service by reselling the services of

incumbent local exchange carriers obtained at regulated “wholesale” rates in accordance with Sections 251(c)(4) and 252(d)(3) of the Act, the rates which TracFone is charged by its vendors are the product of market-driven arms-length negotiations. Thus, there is no universal service support built into those rates.

Finally, designation of TracFone as an ETC in rural telephone company service areas is supported by the public interest for various reasons. For example, consumers will benefit from the competitive choice that will be available, especially due to the fact that TracFone will provide valuable wireless service to rural communities. In addition, TracFone’s service offerings provide unique advantages. Specifically, TracFone provides affordable wireless telecommunications service to consumers to whom wireless service is otherwise unavailable or impracticable. TracFone offers pay-as-you-go service and none of the incumbent providers or the non-incumbent ETCs serving the areas covered by TracFone in Florida offer service to consumers under comparable conditions.

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**PETITION FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER  
IN THE STATE OF FLORIDA**

TracFone Wireless, Inc. ("TracFone"), by its undersigned counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Communications Act"), hereby submits this Petition for Designation as an eligible telecommunications carrier ("ETC") in the State of Florida. TracFone provides wireless telecommunications services throughout the State of Florida. As demonstrated herein, and certified in Exhibit 1 to this Petition, TracFone meets all of the statutory and regulatory requirements for designation as an ETC in the State of Florida. TracFone respectfully requests that the Commission promptly grant this Petition.

**I. TracFone's Universal Service Offering**

TracFone is a reseller of commercial mobile radio service ("CMRS") throughout the United States, including the State of Florida. TracFone provides service through a "virtual network" consisting of services obtained from more than thirty licensed operators of wireless networks. TracFone has provided CMRS service throughout the State of Florida continuously

for seven years. In Florida, TracFone obtains service from the following underlying carriers: Alltel; AT&T Wireless; Cingular Wireless; US Cellular; and Verizon Wireless. TracFone's arrangements with these providers enable it to offer services wherever any of those providers offer service in the State of Florida.

TracFone, through its resale agreements with the underlying carriers identified in the preceding paragraph, has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the Commission's Rules (47 C.F.R. § 54.101(a)) throughout Florida. Upon designation as an ETC, TracFone will make available to consumers a universal service offering with all of the functionalities and features currently provided by TracFone to existing customers. TracFone will provide service pursuant to the universal service program, including Lifeline Service to qualifying customers, to any customer requesting this service within the designated service area.

Indeed, even without classification as an ETC, TracFone currently operates in accordance with the spirit of universal service. Because TracFone utilizes the networks of more than thirty licensed CMRS providers, TracFone service is available virtually nationwide (including throughout the State of Florida). Moreover, TracFone service is available at nationally uniform rates. TracFone service is priced no higher in Jasper (Hamilton County), Florida than it is in Miami, Florida. This is so despite the fact that TracFone's agreements with smaller, independent CMRS providers who serve rural areas, including, for example, Jasper, Florida, require TracFone to incur substantially higher costs to serve those areas. In fact, in some markets, TracFone's cost per minute of service in rural areas is higher than the nationally uniform rate it charges its customers in those areas.

## **II. TracFone Meets the Requirements For Designation as an Eligible Telecommunications Carrier to Serve the Designated Areas in the State of Florida.**

Under Section 214(e)(6) of the Act (47 U.S.C. § 214(e)(6)), the Commission, consistent with the public interest, convenience and necessity, may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of Section 214(e)(6). As demonstrated below, and as set forth in the Declaration of F.J. Pollak, Exhibit 1, TracFone meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(6) set forth in the Commission's Section 214(e)(6) Public Notice, as demonstrated in this Petition.<sup>1</sup> In addition, TracFone complies with the standards established by the Commission for determining whether applications for ETC status to serve areas served by rural local exchange carriers would serve the public interest.<sup>2</sup> TracFone recognizes that Section 214(e)(1)(A) states that ETCs shall offer services, at least in part, over their own facilities. However, as described at Section II.B of this petition, On June 8, 2004, TracFone filed with the Commission a petition requesting that the Commission exercise its forbearance authority with respect to that facilities-based service requirement.<sup>3</sup> For the reasons set forth in its petition for forbearance, TracFone meets all of the conditions to grant of a petition for forbearance codified

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<sup>1</sup> See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, *Public Notice*, 12 FCC Rcd 22947 (1997) ("Section 214(e)(6) Public Notice").

<sup>2</sup> See Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, FCC 03-338, released January 22, 2004 ("Virginia Cellular"); Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, FCC 04-37, released April 12, 2004 ("Highland Cellular").

<sup>3</sup> By public notice dated June 24, 2004, the Commission has invited comment on TracFone's forbearance petition. See Public Notice – Parties Are Invited To Comment On TracFone Wireless' Petition For Designation As An Eligible Telecommunications Carrier In The State Of New York And Petition For Forbearance From Application Of Section 214, DA 04-1822, released June 24, 2004.



at Section 10 of the Act (47 U.S.C. § 160).

**A. The Florida Public Service Commission Does Not Regulate CMRS Service**

A carrier seeking designation as an ETC must typically request such a designation from the applicable state regulatory commission. However, the Florida Public Service Commission (the “FPSC”) does not regulate CMRS carriers such as TracFone for the purpose of making ETC determinations. A declaration to this effect, dated September 23, 2003, has been provided by the FPSC, and is attached to this Petition as Exhibit 2.<sup>4</sup> This declaratory statement meets the Commission’s specific requirements for such documents, in that it specifies that CMRS carriers in general are not subject to the State of Florida Public Service Law, and therefore TracFone is not subject to the jurisdiction of the FPSC for the purpose of making Eligible Telecommunications Carrier designations. TracFone accordingly requests that the FCC designate TracFone as “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission” pursuant to 47 U.S.C. § 214(e)(6).

**B. TracFone Will Provide Service Through Resale**

Section 214(e)(1)(A) states that a carrier designated as an ETC shall offer services supported by Federal universal service support programs “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.” TracFone is a reseller of the following carriers’ services in Florida: Alltel; AT&T Wireless; Cingular Wireless; U.S.

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<sup>4</sup> See In re: Petition for declaratory statement that NCPR, Inc. d/b/a Nextel Partners, commercial mobile radio service provider in Florida, is not subject to jurisdiction of Florida Public Service Commission for purposes of designation as “eligible telecommunications carrier”, Order No. PSC-03-1063-DS-TP, p. 3 (2003) (holding “this Commission does not have jurisdiction over CMRS carriers for purposes of determining eligibility for ETC status”).

Cellular; and Verizon Wireless. TracFone has filed with the Commission a Petition for Forbearance requesting that the Commission forbear from applying Section 214(e)(1)(A) to TracFone. As detailed in the Petition for Forbearance, in the case of TracFone, enforcement of the requirement that an ETC provide services using at least some of its own facilities is not necessary to ensure that TracFone's charges and practices are just and reasonable and are not unjustly or unreasonably discriminatory; is not necessary to protect consumers; and is consistent with the public interest.<sup>5</sup>

### **C. TracFone Offers All Required Services and Functionalities**

TracFone offers, or will offer upon designation as an ETC in the Designated Areas, all of the services and functionalities required by Section 54.101(a) of the Commission's Rules (47 C.F.R. § 54.101(a)) including the following:

#### **1. Voice grade access to the public switched telephone network.**

Voice grade access to the public switched telephone network ("PSTN") means the ability to make and receive traditional voice phone calls between the approximately 500 Hertz and 4,000 Hertz for a bandwidth of approximately 3500 Hertz.<sup>6</sup> The voice grade access provided by TracFone enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.

#### **2. Local Usage.**

As part of the voice grade access to the PSTN, an ETC must provide local calling. TracFone provides subscribers the ability to send and receive local phone calls wherever it

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<sup>5</sup> See 47 U.S.C. § 160.

<sup>6</sup> See Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776 at 8810-11 (1997) ("USF Order").

provides service. Moreover, local usage is included in all of TracFone's calling plans. As a designated ETC, TracFone will comply with any applicable minimum local usage requirements adopted by the Commission.

**3. Dual tone multi-frequency ("DTMF") signaling or its functional equivalent.**

DTMF signaling allows carriers to provide expeditious call set-up and call detail information and enables modem usage.<sup>7</sup> The Commission permits carriers to provide signaling that is functionally equivalent to DTMF to satisfy the DTMF requirement. All telephone handsets sold by TracFone are DTMF-capable.

**4. Single-party service or its functional equivalent.**

Single-party service means that only one party will be served by a subscriber line or access loop in contrast to a multi-party line.<sup>8</sup> TracFone provides customers with single-party access for the duration of every phone call. TracFone does not provide "multi-party" or "party line" services.

**5. Access to 911 and E911 emergency service.**

The Commission has declared that access to emergency services is essential.<sup>9</sup> TracFone provides universal access to the 911 system for its customers. TracFone has implemented and will continue to implement enhanced 911 ("E911") services consistent with the Commission's Rules and Orders when such services are made available by the carriers from whom TracFone purchases services. In particular, TracFone will fully comply with the Commission's E911

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<sup>7</sup> USF Order at 8814.

<sup>8</sup> USF Order at 8810.

<sup>9</sup> Id. at 8815.

requirements applicable to wireless resellers.<sup>10</sup> Pursuant to the Commission's E911 Order, resellers that use other carriers' facilities to provide wireless voice service to customers have an obligation to comply with the Commission's E911 rules "to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver enhanced 911 information to the appropriate PSAP [public service answering point]."<sup>11</sup> TracFone will make available access to E-911 service in accordance with applicable Commission requirements.

**6. Access to operator services.**

TracFone offers all of its customers access to operator services, in accordance with the Commission's requirements.

**7. Access to interexchange service ("IXC").**

TracFone customers can use TracFone's services to complete toll calls. In fact, TracFone does not impose separate charges for interexchange calls. Long distance calling is included in TracFone's service with no additional charge.

**8. Access to directory assistance.**

All TracFone customers receive access to directory assistance service through the TracFone virtual network. Specifically, all TracFone customers, including those customers located in Florida, have access to directory assistance services provided by TracFone's vendors.

**9. Toll limitation for qualified low-income customers.**

There is no need for TracFone to offer a toll limitation feature to qualifying low-income customers. Since TracFone's service is a prepaid service, no customers will be disconnected for failure to pay toll charges or, for that matter, any other charges. TracFone treats long distance

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<sup>10</sup> See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340 (2003) ("E911 Order").

<sup>11</sup> Id. ¶ 91.

minutes as any other minutes and the customers are not charged separately for toll services. Inasmuch as all TracFone services are prepaid there is no danger that low income customers will incur large charges for heavy toll (or other) calling and no risk that they will be disconnected for nonpayment. Since customers pay for the service in advance – they can use only what they already have paid for. Thus, TracFone's prepaid services are especially beneficial to lower income users since the consumers' enjoy the ability to control or limit their charges for toll service (as well as local service) in a manner that customers of traditional post-paid (billed in arrears services) do not.

#### **D. TracFone Will Advertise the Availability of Supported Services**

TracFone will advertise the availability of the above-described services and the charges therefor using media of general distribution, in accordance with the requirements of Section 54.201(d)(2) of the Commission's Rules (47 C.F.R. § 54.201(d)(2)). TracFone currently advertises the availability of its services, and will do so for each supported service on a regular basis, in newspapers and magazines, or on radio and television, that constitute media of general distribution in Designated Areas of the State of Florida. In addition, TracFone services are advertised through use of displays at the numerous retail outlets where TracFone service is sold.

#### **E. TracFone Requests Designation Throughout Its Licensed Service Area in Florida**

TracFone is not a rural telephone company as defined in Section 153(37) of the Communications Act (47 U.S.C. § 153(37)). Accordingly, TracFone is required to describe the geographic area(s) within which it requests designation as an ETC. TracFone requests designation as an ETC for its entire service area in Florida. TracFone, through its resale of wireless services provided by its underlying vendors in Florida, provides service in every Zip Code in the State of Florida. Accordingly, TracFone seeks ETC status throughout the entire State

of Florida.

### **1. Non-Rural Areas**

For non-rural service areas, there are no restrictions on how a state commission defines the “service area” for purposes of designating a competitive ETC. TracFone’s authorized service area covers the following non-rural telephone company service areas:

BellSouth Telecommunications, Inc.  
Verizon Florida, Inc.

The Commission may designate TracFone as an ETC in areas that TracFone serves without redefining the service areas of the non-rural telephone companies set forth above.

### **2. Rural Areas**

TracFone’s authorized service area covers the following rural telephone company service areas in their entirety:

Alltel Florida, Inc.  
Frontier Communications of the South, Inc.  
GTC, Inc. d/b/a GT Com  
ITS Telecommunications Systems, Inc.  
Northeast Florida Telephone Company d/b/a NEFCOM  
Quincy Telephone Company d/b/a Telecom/Quincy Telephone  
Smart City Telecommunications, LLC d/b/a Smart City Telecom  
Sprint-Florida, Inc.

The Commission may designate TracFone as an ETC in these rural telephone company service areas upon a finding that such designation would serve the public interest.<sup>12</sup>

### **III. Designation of TracFone as an ETC for the Designated Areas In the State of Florida Would Serve the Public Interest**

As noted above, TracFone seeks certification as an ETC in areas served by rural telephone companies, as well as in areas served by non-rural telephone companies. Consequently, the Communications Act requires that the Commission determine that TracFone’s

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<sup>12</sup> See 47 C.F.R. § 54.207(c).

designation as an ETC would serve the public interest.<sup>13</sup>

The Commission has determined that “[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”<sup>14</sup> This is particularly applicable in the rural areas served by TracFone within the State of Florida -- areas that in most cases are not presently served by competitive wireline carriers that could provide an alternative to the incumbent LECs. Designation of TracFone as an ETC will provide a valuable alternative to the existing telecommunications services available in these areas. Those public interest benefits include larger local calling areas, the convenience and security afforded by mobile telephony service, the opportunity for customers to control their costs by purchasing in advance only the volumes of service which they need and supplementing those quantities on an “as needed” basis, and, available E-911 service in accordance with the Commission’s E-911 requirements. In addition, TracFone’s inclusion of toll calling within its calling plans will enable consumers to avoid the risk of becoming burdened with large and unanticipated charges for toll calling.

In addition, designation of TracFone as an ETC will provide an incentive to the incumbent LECs in the designated rural areas to improve their existing networks to remain competitive, resulting in improved services to consumers. Designation of TracFone as an ETC in each case will also benefit consumers because support to services provided by TracFone will help assure that quality services are available at “just, reasonable, and affordable rates” as envisioned in the Communications Act.<sup>15</sup>

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<sup>13</sup> 47 U.S.C. § 214(e)(6).

<sup>14</sup> See Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, *Memorandum Opinion and Order*, CC Docket No. 96-45, 16 FCC Rcd 48, 55 (2000).

<sup>15</sup> See 47 U.S.C. § 254(b)(1).

In its recent Highland Cellular decision, the Commission identified several factors to be considered in determining whether designation of an additional ETC in a rural area would serve the public interest. These factors require the Commission to weigh whether the benefits of an additional ETC in specific rural areas would outweigh potential harms. The factors to be considered include: 1) the benefits of increased competitive choice; 2) the impact of the designation on the universal service fund; 3) the unique advantages of the applicant company's service offerings; 4) commitments made regarding the quality of services to be provided; and 5) the ETC applicant's ability to satisfy its obligation to serve the designated areas within a reasonable time frame.<sup>16</sup> As described in the following paragraphs, TracFone meets each of those criteria.

### **1. The Benefits of Competitive Choice**

The benefits to consumers of being able to choose from among a variety of telecommunications service providers have been acknowledged by the Commission for more than three decades.<sup>17</sup> However, the benefits of competitive choice are especially valuable in situations in which wireless providers like TracFone seek to provide service to rural communities. As the Commission recognized in Highland Cellular, some residences located in rural communities do not have access to the public switched network through the incumbent local exchange carrier. Moreover, the availability of a wireless competitive alternative benefits those rural consumers who often must drive significant distances to work, to schools, to stores, and to other community locations.<sup>18</sup> TracFone's prepaid wireless service alternative will provide consumers with convenient and affordable service, both from their residences and when they are

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<sup>16</sup> Highland Cellular at § 22.

<sup>17</sup> See, e.g., Specialized Common Carrier Services, 29 FCC2d 870 (1971).

<sup>18</sup> Highland Cellular at § 23.



away from their homes.

## **2. Impact on the Universal Service Fund**

Whatever impact classification of TracFone as an ETC will have on the universal service fund will be negligible. As noted by the Commission in Highland Cellular, the total size of the fund as of fourth quarter 2003 was \$857,903.276. That same quarter competitive ETCs received approximately \$32 million or 3.7% of the available high cost support. TracFone does not anticipate that the amount of universal service funding which it might receive would be more than a *de minimis* portion of the fund size.

## **3. Unique Advantages of TracFone's Service Offerings**

As described elsewhere in this petition, TracFone's entire business model is predicated on providing easy to use, pay-as-you-go, affordable wireless telecommunications service to consumers to whom wireless service is otherwise unavailable or impracticable. TracFone offers consumers an opportunity to acquire wireless service using state-of-the-art handsets and such features as caller ID, voice mail, call forwarding, and long distance calling without toll charges. Because TracFone's service requires no term contracts, no minimum service periods or volume commitments, no credit checks, the service is available to everyone – irrespective of age; irrespective of residency; irrespective of creditworthiness. Moreover, TracFone's prepaid service is unique in that usage information and remaining balance information is stored in the handsets and is thus available to consumers on a "real-time" basis. None of the incumbent providers nor those other non-incumbent ETCs serving the areas covered by TracFone in Florida offer service to consumers under comparable conditions.

## **4. Service Quality Commitments Made**

As a reseller of other carriers' wireless services, TracFone's service is of the same quality

and reliability as that of its underlying vendors. TracFone cannot assure the Commission that it will never experience service disruptions. Occasional dropped calls and inconsistent coverage depending on atmospheric conditions are a fact of life in the wireless industry. TracFone believes that its service is as reliable as that of any other provider serving the Florida market. To demonstrate its commitment to high service quality, TracFone will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service. In addition, it is willing to provide report to the Commission information regarding the number of consumer complaints per 1,000 handsets on an annual basis (the commitment made by Highland Cellular).

#### **5. TracFone Will be Able to Serve the Designated Areas Within a Reasonable Time**

TracFone provides service in Florida by reselling service which it obtains from five underlying facilities-based providers. Each of those providers' networks are operational and are largely built out. Thus, TracFone will be able to provide service to all locations served by any of those five underlying carriers immediately upon grant of this application.

Designation of TracFone as an ETC will also serve the public interest because TracFone will provide all of the supported services required by the Commission, will participate in the Lifeline and Link-Up programs as required by the Commission's Rules, and will otherwise comply with all FCC Rules governing universal service programs, which are designed to ensure that the public interest standards of the Communications Act are achieved. Allowing TracFone access to universal service support will enable TracFone to continue to enhance and expand its service to better serve consumers in underserved, high-cost areas of the State of Florida. As a national leader in prepaid wireless services, TracFone has done much to advance the availability of wireless service for those portions of the population for whom wireless service is otherwise

unavailable or, if available, is too costly and requires usage and volume commitments which are beyond the means of many consumers.

Finally, designation of TracFone as an ETC will serve the public interest by further promoting the extensive role TracFone plays in the provision of communications services to lower income and lower volume users, transient users, as well as other consumers who either choose not to enter into long-term service commitments or who are unable to meet the credit requirements necessary to obtain service from other wireline or wireless carriers. TracFone's "pay-as-you-go" wireless plans enable consumers to enjoy the convenience and security of wireless telecommunication without being subject to extensive credit reviews and long-term service commitments which historically have limited the availability of wireless service to many Americans, including many Floridians. Accordingly, designation of TracFone as an ETC will serve the public interest.

#### **IV. Anti-Drug Abuse Certification**

No party to this Petition is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. Section 862.<sup>19</sup>

#### **V. High-Cost, Interstate Access, and Interstate Common Line Support Certification**

Under Sections 54.313, 54.314 and 54.904 of the Commission's Rules (47 C.F.R. §§ 54.313, 54.314 & 54.904), as well as 47 C.F.R. § 54.809, carriers wishing to obtain universal service support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the Commission and the Universal Service Administrative Company ("USAC") as to their compliance with Section 254(e) of the Communications Act (47 U.S.C. § 254(e)). As explained above, the FPSC does not

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<sup>19</sup> See Declaration of F.J. Pollak, attached hereto as Exhibit 1.

exercise jurisdiction over CMRS carriers such as TracFone. Therefore, TracFone has submitted its high-cost interstate access and interstate common line support certification letter with the Commission and with USAC. A copy of this certification is attached hereto as Exhibit 3. TracFone respectfully requests that the Commission issue a finding that TracFone has met the high-cost, interstate access and interstate common lines support certification requirement and that TracFone is, therefore, entitled to begin receiving such support where available, as of the date it receives a grant of ETC status in order that funding not be delayed.<sup>20</sup>

## VI. Conclusion

Based on the foregoing, TracFone contends that the requirements for eligibility for designation as an eligible telecommunications carrier have been met. Therefore, TracFone requests that the Commission promptly grant this Petition.

Respectfully submitted,



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July 21 , 2004

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<sup>20</sup> See Guam and Cellular Paging, Inc. Petition for Waiver of FCC Rule Section 54.314, Order, 18 FCC Rcd 7138 (2003).

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# Exhibit 1

## DECLARATION OF TRACFONE WIRELESS, INC.

F.J. Pollak, after first being sworn on oath, and pursuant to 47 C.F.R. § 1.16, states as follows:

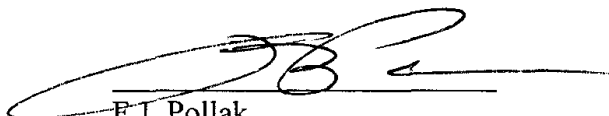
1. I am President and Chief Executive Officer of TracFone Wireless, Inc. My business address is 8930 N.W. 25<sup>th</sup> Street, Miami, Florida 33122-1902

2. In my capacity as President and Chief Executive Officer of TracFone Wireless, Inc., I am an authorized representative of the Company. I have read TracFone's Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida (Petition) and confirm the information contained therein to be true and correct to the best of my present knowledge.

3. To the best of my knowledge, no party to the Petition, nor any of their officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) as specified in Section 1.2002(b) of the Commission's rules, are subject to denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

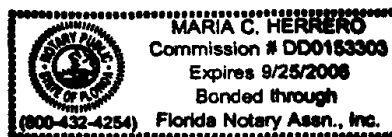
I hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on July 19, 2004.

  
F.J. Pollak  
President and Chief Executive Officer

Subscribed and sworn to before me  
This 19 day of July 2004.

  
Notary Public



## Exhibit 2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement that NPCR, Inc. d/b/a Nextel Partners, commercial mobile radio service provider in Florida, is not subject to jurisdiction of Florida Public Service Commission for purposes of designation as "eligible telecommunications carrier."

DOCKET NO. 030346-TP

In re: Petition for declaratory statement that ALLTEL Communications, Inc., commercial mobile radio service provider in Florida, is not subject to jurisdiction of Florida Public Service Commission for purposes of designation as "eligible telecommunications carrier."

DOCKET NO. 030413-TP  
ORDER NO. PSC-03-1063-DS-TP  
ISSUED: September 23, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

DECLARATORY STATEMENT

BY THE COMMISSION:

**I. INTRODUCTION**

**A. The Parties**

By petitions filed April 16, 2003, and April 29, 2003, respectively, NPCR, Inc., d/b/a Nextel Partners (Nextel), and ALLTEL Wireless Holdings, L.L.C. and New York NEWCO Subsidiary, Inc., subsidiaries of ALLTEL Communications, Inc. (ALLTEL), both of which are commercial mobile radio service (CMRS) providers, requested declaratory statements pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, that the Florida Public Service Commission (Commission) lacks jurisdiction to designate CMRS carriers eligible

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telecommunications carrier (ETC) status for the purpose of receiving federal universal service support.<sup>1</sup>

Northeast Florida Telephone Company (Northeast Florida) and GTC, Inc. d/b/a GT COM (GT Com) filed petitions to intervene in these dockets on May 22, 2003. TDS TELECOM/Quincy Telephone (Quincy) filed a petition to intervene on May 29, 2003. ALLTEL filed a response but did not oppose the intervention. The petitions were granted by Order Nos. PSC-03-0712-PCO-TP and PSC-03-0713-PCO-TP, respectively, on June 16, 2003.

**B. Summary of Ruling**

After careful consideration and as discussed, *infra*, the Commission grants Nextel's and ALLTEL's petitions for declaratory statements.

ETC status is a prerequisite for a carrier to be eligible to receive universal service funding. The Federal Communications Commission (FCC) has determined that CMRS carriers, such as Nextel and ALLTEL, may be designated as ETCs. Section 214(e)(6) of the federal 1996 Telecommunications Act (1996 Act) provides that where a carrier is not subject to the jurisdiction of a state commission, then the FCC shall make the ETC determination. The FCC has ruled that, in order for it to consider requests for ETC status, the requesting carrier must provide an "affirmative statement" from the state commission or a court of competent jurisdiction that the state commission lacks the jurisdiction to make the designation.<sup>2</sup> See *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-208 (released June 30, 2000) at ¶ 93.<sup>3</sup>

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<sup>1</sup> Notice of receipt of Nextel's Petition for Declaratory Statement was published in the May 2, 2003, issue of the Florida Administrative Weekly. Notice of receipt of ALLTEL's Petition was published in the May 16, 2003, issue. The petitioners agreed to toll the statutory time for disposition in order for us to consider their petitions at our August 19, 2003, agenda conference.

<sup>2</sup> We note that numerous state commissions have held that they do not have jurisdiction to designate CMRS carriers ETC status.

<sup>3</sup> See also FCC 01-283, *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, 16 FCC Rcd 18133; 2001 FCC LEXIS 5313, fn. 46 (released October 5, 2001); FCC 97-419, *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to § 214(e)(6) of the Telecommunications Act* (released December 29, 1997).

As discussed, *infra*, this Commission does not have jurisdiction over CMRS carriers for purposes of determining eligibility for ETC status. Indeed, the Florida Legislature has expressly excluded CMRS providers from the jurisdiction of the Commission. As the Commission lacks jurisdiction over CMRS providers, the FCC is the appropriate venue for Nextel and ALLTEL to seek ETC status.

## II. THE COMMISSION LACKS JURISDICTION OVER CMRS PROVIDERS

### A. Lack of Jurisdiction Over CMRS Providers

As a legislatively created body, the jurisdiction of the Commission is that conferred by statute – but no more than that. Chapter 364, Florida Statutes, governs our resolution of this threshold, and dispositive, jurisdictional issue. For present purposes, Chapter 364 expressly limits our jurisdiction to jurisdiction over “telecommunications companies” as set forth in that chapter.<sup>4</sup> A telecommunications company does not include a CMRS provider. Indeed, the Legislature specifically provided to the contrary in Section 364.02(12), Florida Statutes, which expressly states that:

The term “telecommunications company” *does not include*:

...

(c) A commercial mobile radio service provider;

§ 364.02(12)(c), Fla. Stat. (emphasis added).<sup>5</sup>

The Commission has previously recognized, correctly so, that it lacks jurisdiction over CMRS providers. Specifically, in *In re: Application for certificate to provide pay telephone service by Radio Communications Corporation, and request for waiver of Rule 25-24.515(6), (10), and (14), F.A.C.*, the Commission noted that, pursuant to Section 364.02(12)(c), Florida Statutes, CMRS providers are “not regulated by this Commission” and that CMRS providers are “not subject to

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<sup>4</sup> Section 364.01, Florida Statutes, titled “Powers of commission, legislative intent,” states that “(1) The Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter.”

<sup>5</sup> The one exception, not applicable here, is that CMRS providers along with intrastate interexchange telecommunications companies (also not regulated by the Commission) shall continue to be liable for any taxes imposed by the State pursuant to Chapters 202, 203, and 212, Florida Statutes, and any fees assessed pursuant to Chapter 364, Florida Statutes. *See* § 364.02(12), Fla.Stat.

Commission rules.” See Order No. PSC-00-1243-PAA-TC, Docket No. 991821-TC (July 10, 2000).<sup>6</sup>

**B. The Arguments of the Intervenor**

Intervenors’ reliance on the Commission’s Order in *In re: Establishment of Eligible Telecommunications Carriers Pursuant to Section 214(e) of the Telecommunications Act of 1996* is misplaced. See Commission Order No. PSC-97-1262-FOF-TP, issued October 14, 1997, in Docket No. 970644-TP. That order states, in pertinent part:

We believe that the requirements of the 1996 Act can be met initially by designating the incumbent LECs as ETCs. Upon consideration, we hereby designate the incumbent LECs (ILECs) as ETCs. LECs should continue to serve their current certificated service areas. All other carriers (non-ILECs) who wish to receive ETC status in the service area of a non-rural LEC should file a petition with the Commission for ETC status . . .

*Id.* at 4. In that order, the Commission also opined that “mobile carriers may serve those areas [where ALECs were prohibited from offering basic local telecommunications services within the territory served by a small LEC before January 1, 2001, unless the small LEC has elected price regulation], and may apply for ETC status.” *Id.* at 4.

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<sup>6</sup> Numerous state commissions have likewise held that they lack jurisdiction to designate ETC status for CMRS carriers. See, e.g., *In the Matter of Designation of Carriers Eligible for Universal Carrier Support*, Docket No. P-100, SUB 133c, 2003 WL 21638308, 2003 N.C. PUC LEXIS 686 (N.C.U.C., June 24, 2003) (“...the Commission ...lacks jurisdiction to designate ETC status for CMRS carriers.... [North Carolina statute] G.S. 62-3(23)j, enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction”); *In re Telecommunications Act of 1996*, 2002 WL 1277821, 2002 Va. PUC LEXIS 315, (Va. S.C.C., April 9, 2002) (“The Commission finds that § 214(e) (6) of the Act is applicable to Virginia Cellular’s Application as this Commission has not asserted jurisdiction over CMRS carriers and that the Applicant should apply to the FCC for ETC designation”); *In re Pine Belt Cellular, Inc.*, Docket U-4400, Alabama Public Service Commission, 2002 WL 1271460, 2002 Ala. PUC LEXIS 196 (March 12, 2002) (“it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC § 214(e)(6)”).

Reliance on this statement to conclude that this Commission has jurisdiction to designate CMRS carriers as having ETC status is misguided. Simply put, the Commission cannot by fiat simply declare its own jurisdiction where, as the Florida Legislature has made clear, no jurisdiction exists.<sup>7</sup> See, e.g., *Gulf Coast Hospital, Inc. v. Dept. of Health and Rehabilitative Services*, 424 So. 2d 86, 91 (Fla. 1<sup>st</sup> DCA 1982) (noting that even if an agency's policy concerns might be valid, "[a]rguments concerning the potential effect of the legislation or questioning the wisdom of such legislation are matters which should be presented to the Legislature itself.").

Intervenors' public interest argument must likewise fail. Intervenors argue that Florida's public interest would not be served by having competitive carriers, including CMRS providers such as petitioners, designated as ETCs in rural areas. They continue that this Commission is best situated to make the public interest inquiry. This argument is fundamentally flawed. It is only if this Commission has jurisdiction over CMRS carriers in the first instance that the Commission could exercise that jurisdiction to perform the inquiry proposed by Intervenors.

**C. Intervenors Run Afoul of Cape Coral and its Progeny**

The arguments of the Intervenors run counter to the clear teachings of *Cape Coral* and its progeny. Florida law makes clear that the Commission does not have jurisdiction over CMRS carriers. Even if there was doubt about that proposition, which the Florida Legislature has made clear there is not, such doubt would have to be resolved against finding jurisdiction. As the Florida Supreme Court made clear in *City of Cape Coral v. GAC Utilities, Inc., of Florida*:

All administrative bodies created by the Legislature are not constitutional bodies, but, rather, simply mere creatures of statute. This, of course, includes the Public Service Commission.... As such, the Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State.... Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof,... and the further exercise of the power should be arrested.

281 So. 2d 493, 495-96 (Fla. 1973). See also *Lee County Elec. Co-op., Inc. v. Jacobs*, 820 So. 2d 297 (Fla. 2002) ("any reasonable doubt regarding its regulatory power compels the PSC to resolve

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<sup>7</sup> We also note that the issue of the Commission's jurisdiction to determine ETC status for CMRS providers was not raised, litigated, or relevant to the holding in Order No. PSC-97-1262-FOF-TP, which designated local exchange companies in Florida as ETCs. We also note that in the time since that holding, Congress, through the enactment of Section 214(e)(6) to the 1996 Act, expressly authorized the FCC to make ETC designations of CMRS providers when states like Alabama, Florida, North Carolina, Virginia, and others lack jurisdiction over such carriers.

that doubt against the exercise of jurisdiction"); *Dept. of Transp. v. Mayo*, 354 So. 2d 359 (Fla. 1977) ("any reasonable doubt as to the existence of a particular power of the Commission must be resolved against it"); *Schiffman v. Dept. of Professional Regulation, Board of Pharmacy*, 581 So. 2d 1375, 1379 (Fla. 1<sup>st</sup> DCA 1991) ("An administrative agency has only the authority that the legislature has conferred it by statute"); *Lewis Oil Co., Inc. v. Alachua County*, 496 So. 2d 184, 189 (Fla. 1<sup>st</sup> DCA 1986) ("Administrative agencies have only the powers delegated by statute").

The Commission has previously (and correctly) recognized the limited nature of its jurisdiction. See *In re: Complaint Against Florida Power & Light Company Regarding Placement of Power Poles and Transmission Lines*, Docket No. 010908-EI, Order No. PSC-02-0788-PAA-EI, Florida Public Service Commission, June 10, 2002; *In re: Complaint and Petition by Lee County Electric Cooperative, Inc. for an Investigation of the Rate Structure of Seminole Electric Cooperative, Inc.*, Docket No. 981827-EC, Order No. PSC-01-0217-FOF-EC, Florida Public Service Commission, January 23, 2001 (recognizing that any doubt as to the Commission's jurisdiction must be resolved against an exercise of jurisdiction).

The authority of this Commission is derived from state law as written by the Florida Legislature, and that authority is expressly limited as it pertains to CMRS providers. Regardless of the merits of the debate of state versus federal designation of ETC status for wireless providers, the Commission must remain cognizant of our role and not regulate beyond our specific mandate. Despite good intentions, we should avoid even the appearance that we are replacing the Legislature's judgment with our own.

Florida as a state certainly has an interest in universal service issues. That interest, however, does not create jurisdiction in this Commission to determine whether CMRS carriers should be granted ETC status (a status, we note, that is one of federal creation),<sup>8</sup> especially where the Legislature has specifically provided that the Commission does not have jurisdiction over CMRS providers.<sup>9</sup> As a creature of statute, this Commission is not free to operate according to its "own inscrutable wisdom, 'an administrative Frankenstein, once created, (acting) beyond the control of its Legislature creator.'" *Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1<sup>st</sup> DCA 1980) (discussing the

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<sup>8</sup> We note that other states have an interest in universal service issues, notwithstanding that their utility commissions do not regulate CMRS providers. See, e.g., *N.C. Gen. Stat. A. § 62-110, § 105-164.4c and § 143B-437.40 (North Carolina)*; *Virginia's Universal Service Plan (Va. S.C.C. Case Nos. PUC970135 and PUC970063) and Va. Code Ann. § 56-468*.

<sup>9</sup> Section 364.025, Florida Statutes, provides for alternative local exchange companies (now known as competitive local exchange companies by virtue of Chapter 2003-32, § 3, Laws of Fla., amending Section 364.02, Florida Statutes), which are "telecommunications companies" subject to Commission jurisdiction, to apply to the Commission for universal service provider and carrier of last resort status. Notably, no similar provision exists regarding CMRS providers.

Parole Commission). Indeed, "[a]rguments concerning the potential effect of the legislation or questioning the wisdom of such legislation are matters which should be presented to the Legislature itself." *Gulf Coast Hospital, Inc. v. Dept. of Health and Rehabilitative Services*, 424 So. 2d 86, 91 (Fla. 1<sup>st</sup> DCA 1982).

**D. Conclusion**

Based on the foregoing, the Commission does not have jurisdiction over CMRS providers for purposes of determining eligibility for ETC status pursuant to 47 U.S.C. § 214(e).

**III. A DECLARATORY JUDGMENT OF "NO JURISDICTION" IS PROPER**

Section 120.565, Florida Statutes, governs the issuance of a declaratory statement. In pertinent part, that section provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, Florida Administrative Code, further explains that: "a declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority." The purpose of a declaratory statement by an administrative agency is to allow a petitioner to select a proper course of action in advance. *Novick v. Dept. of Health, Bd. of Medicine*, 816 So. 2d 1237 (Fla. 5<sup>th</sup> DCA 2002).

Petitioners have satisfied the requirements for the issuance of a declaratory statement by the Commission. At issue is the applicability of Chapter 364, Florida Statutes, which excludes CMRS providers from Commission jurisdiction. As CMRS providers seeking ETC status, which status is a prerequisite to being eligible to receive federal universal service funds, petitioners are "substantially affected persons" within the meaning of Section 120.565, Florida Statutes. Petitioners have stated with particularity their circumstances and have identified the statutory provision that applies to their circumstances.

Intervenors urge us to deny the petitions for declaratory statement. Intervenors first assert that to receive ETC status in the service area of a rural LEC, a non-ILEC must file a petition proposing an appropriate service area and demonstrating that designation as an ETC is in the public interest, a determination that they assert can properly be made only after a formal administrative

hearing and not in a declaratory statement proceeding. They next assert that the petitions require a response that amounts to a rule stating that CMRS providers are not subject to the jurisdiction of the Commission for purposes of designation as an ETC. Finally, Intervenor asserts that the petitions fail to allege an uncertainty about a Commission statute, rule, or order and thus, fail to meet the pleading requirements of Rule 28-105.001, Florida Administrative Code.

Intervenor's arguments fail. Regarding their first assertion, where the Commission lacks jurisdiction, as it does here, it would be illogical for a party to seek to have the Commission exercise jurisdiction to do something it does not have the power to do. To exercise jurisdiction, the Commission would have to determine that the petitioners are telecommunications companies, a determination that is expressly precluded by the statute. As the Commission does not have jurisdiction to make the ETC designation for CMRS providers, it is not necessary for Nextel or ALLTEL to file an application that addresses the eligibility requirements to be designated an ETC.

We also disagree that we should deny the petitions for declaratory statement because the statement requested would amount to a rule. On numerous occasions, the Commission has resolved controversies about the scope of our jurisdiction in declaratory statement proceedings. *See In re: Petition of St. Johns Service Company for declaratory statement on applicability and effect of 367.171(7), Florida Statutes*, Order No. PSC-99-2034-DS-WS, issued October 18, 1999, in Docket No. 982002-WS; *In re: Petition of PW Ventures, Inc., for declaratory statement in Palm Beach County*, Order No. 18302, issued October 16, 1987, in Docket No. 870446-EU, *aff'd on other grounds, PW Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988).

Intervenor confuses the notion of a rule with the issue of jurisdiction. Commission jurisdiction over a matter either exists or it does not. It cannot be created or denied by a rule. Indeed, the Commission could only issue a rule where it has jurisdiction over the subject matter of the rule. Further, determining whether the Legislature has vested the Commission with jurisdiction is typically a one-time determination, whereas rulemaking is more appropriate for such matters as recurring issues, implementation of statutes, and codification of policy.

Finally, we dismiss the assertion that the petitions should be denied for failing to allege an uncertainty about a Commission statute, rule, or order. The petitions seek a statement that our statutes, rules, and orders are not applicable to ALLTEL or Nextel as CMRS providers, for the purposes of determining whether they are eligible to receive federal universal service funding. As set forth herein, we agree. And on the facts presented, this determination is properly made in a declaratory statement proceeding. We therefore conclude that the petitions satisfy the requirements for a declaratory statement.

Based on the foregoing, we grant the petitions and declare that Nextel and ALLTEL, as commercial mobile radio service providers, are not subject to the jurisdiction of the Florida Public Service Commission for purposes of designation as an eligible telecommunications carrier under 47 U.S.C. § 214(e).

ORDER NO. PSC-03-1063-DS-TP  
DOCKETS NOS. 030346-TP, 030413-TP  
PAGE 9

Now, therefore, it is

ORDERED by the Florida Public Service Commission that the Petitions for a Declaratory Statement filed by Nextel & ALLTEL are granted. It is further

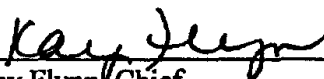
ORDERED that the substance of the Declaratory Statement is as set forth in the body of this Order. It is further

ORDERED that this docket should be closed.

By ORDER of the Florida Public Service Commission this 23rd Day of September, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By:

  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )

CTM

Commissioner Baez dissents. Chairman Jaber dissents from the majority's decision with the following opinion:

Rule 28-105.001, Florida Administrative Code, states in part: "A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency." The circumstances brought before us in these two cases are not limited to the two wireless providers that have filed petitions for declaratory statement. Rather, our decision will impact not only all of the wireless carriers and other telecommunications service providers in Florida, but, more importantly, will impact the state's overall universal service policy. This is a case of first impression, and will result in a policy of general applicability. I do not believe a declaratory statement is the appropriate mechanism for



deciding this very important issue. I would rather establish an expedited proceeding that allows us to hear from other providers in the form of testimony, if appropriate, or legal briefs on federal and state law regarding ETC status and the impact of such on Florida's stance on universal service. In making a decision regarding the jurisdictional issues in this matter, it is critical to fully understand the ramifications of our decision on the size and applicability of the federal universal service fund to Florida's ratepayers. The declaratory statement process does not allow an opportunity for that critical review. Without input from all affected parties on the legal and policy implications of this decision, I am uncomfortable with the conclusion that we do not have jurisdiction in this matter. For these reasons alone, I dissent.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

# Exhibit 3

# TRACFONE

wireless, inc. 8390 NW 25th Street | Miami, FL 33122

June 7, 2004

**VIA OVERNIGHT MAIL**

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Ms. Irene M. Flannery  
Vice President – High Cost and Low Income Division  
Universal Service Administrative Company  
2000 L Street, NW  
Suite 200  
Washington, DC 20036

**RECEIVED**

**JUN - 7 2004**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: TracFone Wireless, Inc.  
Certification for High Cost Loop Support, CC Docket No. 96-45

Dear Ms. Dortch and Ms. Flannery:

This certification is submitted on behalf of TracFone Wireless, Inc. ("TracFone") in accordance with Federal Communications Rules 54.313 and 54.314 (47 C.F.R. §§ 54.313, 54.314). On behalf of TracFone, I hereby certify under penalty of perjury that all high-cost support provided to TracFone will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to Section 254(e) of the Telecommunications Act of 1996 (47 U.S.C. § 254(e)).

Sincerely,

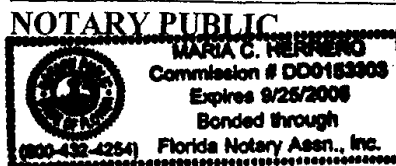
TracFone Wireless, Inc.



F.J. Pollak  
President and Chief Executive Officer

**SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED** before me this 7 day of June, 2004.

*Maria C. Herrero*



My Commission Expires:

9-25-06